

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.11.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE N.PAUL VASANTHAKUMAR

W.A. NOS. 562 & 563 OF 2007

The District Collector
Villupuram District
Villupuram.

.. Appellant in both WAS

- Vs -

1. K.Dashinamurthy
2. G.Baskaran

.. Respondents in do

(R-2 impleaded vide order of Court
dated 7.9.07 in M.P. No.2 of 2007)

Writ appeals filed against the order dated 05.03.2007 passed
by the learned single Judge in W.P. Nos.4137 & 1186 of 2005
respectively as stated therein.

For Appellant : Mr. D.Srinivasan, AGP

For Respondents : Mr. R.Thiagarajan, SC, for
Mr. M.Muthappan for R-1
Ms. AL.Gandhimathi for R-2

COMMON JUDGMENT

S.J.MUKHOPADHAYA, J.

As both these appeals have been preferred by the District
Collector, Villupuram, against common order dated 5th March, 2007
and against common respondent and common question of law involved,
they were heard together and disposed of by this common judgment.

2. The 1st respondent, K.Dakshinamurthy, preferred two writ
petitions before this Court. In one of the writ petition (W.P.
No.1186/05), prayer was made to direct the respondent to execute
the lease deed in his favour for a period of five years in respect
of stone quarry situate in survey No.97/19 Part-7 over an extent
of 6.19.0 hectares in Thiruvakarai Village, Vanur Taluk,
Villupuram District.

The other writ petition (W.P. No.4137/05) was preferred by the said respondent against proceeding in Ref. No.A/G & M/402/94 dated 30th Jan., 2005, whereby his application for lease was rejected by District Collector and amount earlier deposited was forfeited. Further prayer was made to direct the respondents to the writ petition (appellant herein) to execute the lease in favour of him for a period of five years in respect of the aforesaid stone quarry.

3. The brief fact of the case is that the Government of Tamil Nadu issued a special bulletin in the District Gazette dated 27th Dec., 1993, informing interested persons that there will be a public auction of three stone quarries by the Special Collector, Tindivanam, as per Rule 8 (1) of the Tamil Nadu Minor Mineral Concession Rules. Intended bidders were asked to deposit Rs.1,000/= as earnest money before commencement of auction and three years was the period of lease prescribed in the said notification. Certain terms and conditions were also mentioned in the gazette notification, which will be discussed at the appropriate stage.

The 1st respondent (writ petitioner) along with others applied pursuant to the gazette notification dated 27th Dec., 1993, for taking part in the bid for the following quarry :-

Details of Quarry Area :-

Village Name : Thiruvakkarai

Survey No. & its Sub-Dist.	Extent (in Hectares)	Classification of Land	Upset price for the first year lease amount alone
97-19	(Part - 7) 6.19.0	Kallangkuthu	Rs.15,120

Public auction was to be held on 20th Jan., 1994, but writ petitions were filed by third parties - W.P. Nos.687 to 689/94 challenging the aforesaid notification dated 27th Dec., 1993. In those cases, a common interim injunction was passed against confirmation of the lease, but auction was allowed to be proceeded. In another batch of writ petitions - W.P. Nos.823 to 825/94, preferred by third parties, similar interim order was passed on 18th Jan., 1994.

Public auction was held on 20th Jan., 1994, and the 1st respondent was declared as the highest bidder in respect of the quarry situated in survey No.97/19 Part-7, an extent of 6.19.0 hectares in Thiruvakkarai village. The bid amount of respondent being Rs.80,300/= per year, he was to deposit 50% of the bid amount as per tender conditions and he deposited a sum of Rs.40,150/= on 21st Jan., 1994. Subsequently, another sum of Rs.15,000/= was deposited by him on 2nd Feb., 1994.

In connection with the said bid, the 1st respondent also filed a writ petition W.P. No.1520/94 challenging the demand of local cess and local cess surcharge. In the said case, initially

interim order was passed on 31st Jan., 1994, and finally allowed in his favour on 18th July, 1994.

So far as the batch of writ petitions in which the gazette notification dated 27th Dec., 1993 was challenged, out of them, W.P. Nos.823 to 825/94 were dismissed by this Court on 22nd Sept., 1997. The other batch of writ petitions, W.P. Nos.687 to 689/94 were also dismissed as infructuous on 27th April, 2000.

4. One Rangarajan, who also applied pursuant to gazette notification dated 27th Dec., 1993, but in regard to other survey No.53/3 (Part-5), extent of 2.36.5 hectares, was the highest bidder in respect of the said stone quarry. In his case, he deposited the requisite amount, but no lease deed was executed. He also awaited the decision in the writ petitions and after their dismissal, said Rangarajan preferred W.P. No.38730/03 for direction on respondent (appellant herein) to execute the lease deed in his favour in respect of stone quarry measuring 2.36.5 hectares comprised in survey No.53/3 (Part-5) in Thiruvakkarai Village, Vanur Taluk, Villupuram District. Having noticed that the said Rangarajan had deposited the entire bid amount and other stipulated amounts and had complied with all the formalities in the year 1994 itself, this Court, vide order dated 7th Feb., 2004, allowed his writ petition with direction to the authorities to process his application for grant of lease relating to the subject matter of the quarry for a period of five years. However, taking into consideration the fact that the lease amount was fixed as back as in Dec., 1993, while order was passed on 7th Feb., 2004, the said petitioner, Rangarajan was asked to pay 100% over and above the lease amount offered already.

5. Only after order passed in the case of Rangarajan, the 1st respondent herein, K.Dakshinamurthy, requested the authorities for executing a lease deed in his favour, which was rejected vide proceeding in Ref. No.A/G & M/402/94 dated 30th Jan., 2005. Taking the said order of rejection as a fresh cause of action, the two writ petitions in question were preferred challenging the order of rejection dated 30th Jan., 2005 and for execution of lease deed in his favour for a period of five years.

6. Learned single Judge, by impugned common judgment dated 5th March, 2007, while observed that the proceedings remained in stalemate because of the pendency of the writ petition, held that the appellants had not followed Rule 8 (6) (c) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and there is no statutory provision to deposit the balance 50% of the lease amount within ten days. Further, giving reference to order passed by this Court in the case of Rangarajan - Vs - The District Collector, Villupuram District (W.P. No.38730 of 2003) and the decision of the Supreme Court in S.Ganesan - Vs - The District Collector, Tiruchirappalli reported in 2002 (6) Supreme 145, allowed both the writ petitions and directed the authorities to execute lease deed

in favour of the 1st respondent for a period of 5 years on payment of 150% over and above the lease amount.

7. Learned counsel appearing for the appellant while challenged the impugned judgment, distinguished the case of the 1st respondent on the one hand and the cases of Rangarajan and Ganesan on the other hand whose cases were allowed by this Court and Supreme Court. Further, according to him, there being a specific stipulation in the gazette notification, without fulfilling the relevant criteria, no lease could be executed in favour of the 1st respondent. He relied on Supreme Court decision in Monarch Infrastructure (P) Ltd. - Vs - Commissioner, Ulhas Nagar Municipal Corporation reported in (2000) 5 SCC 287 in his support in respect of scope of judicial review of contract and submitted that there being no arbitrary or discriminatory action on the part of the appellant, there was no occasion to allow the writ petition. At best, direction could have been given to carry out the process of tender afresh instead of awarding the contract to one of the existing bidders.

Learned counsel for the appellant further submitted that if the stone quarry is re-auctioned today, the lease amount will exceed Rs.45 lakhs, i.e., much more than 150% over and above the amount of offer given by the 1st respondent.

Learned counsel appearing on behalf of the 1st respondent referred to the facts as noticed above and submitted that there was no laches on the part of the 1st respondent and such petition having been allowed in favour of other similarly situated person like Rangarajan, same relief was rightly granted by learned single Judge, which is also in accordance with the decision of the Supreme Court in the case of S.Ganesan (supra).

8. We have heard the parties and noticed the rival contentions, as recorded above.

9. From the gazette notification dated 27th Dec., 1993, it will be evident that apart from other conditions, the following conditions were also prescribed :-

On completion of auction half of the lease amount was to be deposited on the same date itself. The remaining half of the bid amount, LC, LCS and Land Cess on the lease amount and security deposit was to be deposited within ten days from the date of auction.

It was specifically mentioned that on failure to deposit such amount, the auction will be cancelled and the bidder will be held responsible for loss, if any, and half of the bid amount already paid by the bidder will be forfeited. For any loss to the Government in reauction, the amount will be recovered under the Revenue Recovery Act from the bidder and if any profit is made, the bidder is not entitled for the same. The total deposit of bid

amount, security deposit, etc., were to be made within 30 days from the date of confirmation of order of the highest bidder whereinafter lease deed was to be executed by the District Collector to do quarrying operation. It was specifically mentioned that the highest bidder, if violated any of the conditions, the auction will be cancelled and the earnest money deposit will be appropriated by the Government.

10. Admittedly, there was no stay granted by this Court so far as the auction is concerned. The auction was to be held and actually held on 20th Jan., 1994. As per the gazette notification dated 27th Dec., 1993, on completion of auction, half of the lease amount was to be deposited on the same date itself, i.e., 20th Jan., 1994, but the 1st respondent deposited the 50% of the bid amount on the next day, i.e., 21st Jan., 1994. Apart from security deposit, the remaining half of the bid amount, i.e., Rs.40,150/= was to be deposited within ten days, i.e., by 30th Jan., 1994, but the 1st respondent failed to deposit even the rest of the 50% of the amount by 30th Jan., 1994. There is nothing on the record to suggest that the respondent paid the rest of the amount even by the date the order of rejection was made (30th Jan., 2005). In view of the aforesaid fact, as per mandatory condition laid down in the gazette notification dated 27th Dec., 1993, the 1st respondent having failed to deposit the half of the bid amount on the same date and the rest of the bid amount within 10 days, it was open to the authorities (appellant herein) to cancel the auction and to hold the respondent responsible for loss, if any, incurred.

11. So far as Rule 8 (6) (c) is concerned, the respondent cannot derive any advantage of the said rule. The said Rule 8 (6) (c) relates to grant of lease in favour of the highest bidder, which has to be communicated to such bidder accompanied with the copy of the draft lease deed. If a bidder has failed to deposit the requisite bid amount, the question of sending any draft lease deed in favour of such defaulter does not arise.

12. The 1st respondent also cannot derive any advantage of the decision of this Court in the case of Rangarajan (supra) or the Supreme Court decision in S.Ganesan (supra). It will be evident from the judgment passed in the case of Rangarajan that he moved before this Court in 2003, but the petitioner has failed to explain the ground of delay in moving this Court in 2005 though interim order stood vacated as back as in the year 2000. Further, from the judgment rendered in the case of Rangarajan (supra), it will be evident that the said Rangarajan deposited the entire bid amount and other stipulated amounts and also complied with all the formalities in the year 1994 itself. So far as the 1st respondent is concerned, he failed to deposit the bid amount nor complied with the formalities in the year 1994 and is admittedly a defaulter.

Similarly, it will be evident from the Supreme Court judgment in S.Ganesan (supra) that the said Ganesan was the highest bidder, deposited the total amount of Rs.19 lakhs. He having complied with the formalities and not being a defaulter, relief was granted in his favour by the Supreme Court.

Thus, there is a clear distinction between the case of the respondent, K.Dakshinamurthy, who is a defaulter and the two others, Rangarajan and Ganesan, who deposited the entire bid amount within time.

13. Learned single Judge failed to appreciate the aforesaid fact and, thus, wrongly allowed the writ petitions in favour of a defaulter. We, accordingly, set aside the common order dated 5th March, 2007 passed by learned single Judge in W.P. Nos.1186 & 4137 of 2005, dismiss both the writ petitions and allow the writ appeals. However, in the facts and circumstances, there shall be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

GLN

To

The District Collector
Villupuram District
Villupuram.

2 cc to Mr.M. Muthappan, Advocate, Sr. 66228

JP (CO)
kk 7/11

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